

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:SB:5:DEN:2:GL-112629-01
FJLockhart

date: April 9, 2001

to: Kathy Rusiecki
Technical Support Manager, Technical Territory Area 11, Compliance
(SB/SE)

from: Area Counsel
(Small Business/Self-Employed: Area 5)

Subject: **Approvals of and Signatures on ALS Notices of Federal Tax Lien**

This is in response to your inquiry to Area Counsel (SB/SE) Martin B. Kaye concerning the lien approval and lien signature requirements for notices of federal tax lien in light of the restructured Internal Revenue Service. You presented this request to Mr. Kaye through an e-mail to him dated February 23, 2001.

While we are giving an interim response to your questions in this memorandum, we are sending your request on to the Assistant Chief Counsel (Collection, Bankruptcy & Summonses) in Washington, D.C. because we believe that this matter is of nationwide importance. This interim response memorandum should not be cited as precedent.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege or the agency deliberative process privilege. If disclosure becomes necessary, please contact this office for our views in advance of the disclosure.

ISSUES

1. What, if any, are the lien approval requirements for the issuance and filing of a notice of federal tax lien?

2. What, if any, are the lien signature requirements for ALS notices of federal tax lien?

CONCLUSIONS

1. Supervisory approval prior to filing is required for a notice of federal tax lien proposed by revenue officers below GS-9.

2. While there are no formal lien signature requirements for the filing of an ALS notice of federal tax lien, we recommend that, as an interim measure, the stamped signatures now being used on ALS notices of federal tax lien be replaced by that of Jack B. Cheskaty, Director, SB/SE Compliance Area 11, or, if this is not practical, that the procedure of using the outdated signatures be discontinued until further guidance from this Office.

FACTS

Presently, the notices of federal tax lien for the portion of new SB/SE Compliance Area 11 that was within the former Rocky Mountain District of the Internal Revenue Service are prepared and processed by the Automated Lien System ("ALS") in Denver. Most of the liens in this part of Area 11 are ALS liens, and very few are manually prepared. This appears to be in accordance with the national trend and is in accordance with the strong preference for the same expressed in the Federal Tax Liens Handbook, which is at IRM 5.12. See IRM 5.12.1.24(2). In Denver the ALS unit uses a signature stamp to stamp the name of the former Chief of the Special Procedures Branch (Mara Eckhardt in Denver) just above the printed name of the requesting revenue officer. A similar process occurs in Phoenix (which uses the signature stamp for Kathy Draper, the former Chief of the Phoenix Special Procedures Branch). Phoenix is an ALS location which was within the former Southwest District but which now is also within the new SB/SE Compliance Area 11.

ANALYSIS

1. Prior to the enactment of the IRS Restructuring and Reform Act of 1998, Pub. L. No. 105-206 ("RRA98"), there was no statutory, let alone, administrative, requirement for approval prior to the filing of a notice of federal tax lien. Under RRA98 Section 3421, the Commissioner is required to develop and implement procedures whereby the determination of a Service employee to file a notice of lien or to take levy or seizure action would, where appropriate, be required to be reviewed by a supervisor before the action was taken, such review process permissibly to include a certification that the employee has reviewed the taxpayer's information, verified that there is a balance due and affirmed that the proposed action is appropriate given the taxpayer's

circumstances, considering the amount due and the value of the property. This statute is effective for all collection actions under the automated collection system after December 31, 2000, and for all collection actions (other than ACS collection actions) on or after July 22, 1998.

IRM 5.12.1.3 requires that a determination to file a notice of federal tax lien by revenue officers below GS-9 be reviewed and approved by the supervisor prior to filing with potential sanctions to the employee and supervisor if this is not done. The items to be reviewed in this situation and the items to be documented by revenue officers in all cases include those described in RRA98 Section 3421. Additionally, a list of factors to be considered in determining if lien filing is appropriate is provided in the Manual. IRM 5.12.1.3.1. The next succeeding Manual provision states that Revenue Officer group managers will note their review and approval using the manager's queue on automated systems and that when it is necessary to file a Manual NFTL, supervisors will sign the NFTL for employees below GS-9. IRM 5.12.1.3.2.

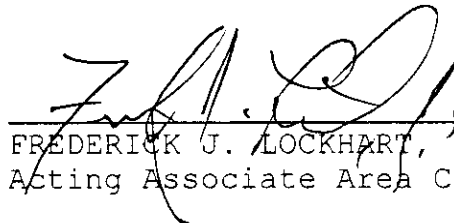
2. We can find no authority for a requirement that a notice of federal tax lien be signed. See I.R.C. § 6323, Treas. Reg. § 301.6323(f)-1(d) and Thompson v. Internal Revenue Service, 23 F.Supp.2d 923 (N.D.Ind. 1998). Treas. Reg. § 301.6323(f)-1(d)(1) states that the notice of federal tax lien shall be filed on a "Form 668, notwithstanding any other provision of law regarding the form or content of a notice of lien." While the Form 668 has a signature block, as stated above, most notices of federal tax lien are now filed via the ALS. Additionally, some are now filed electronically. Treas. Reg. § 301.6323(f)-1(d)(2) reads as follows:

(2) *Form 668 defined.* The term "Form 668" generally means a paper form. However, if a state in which a notice referred to in §301.6323(a)-1 is filed permits a notice of Federal tax lien to be filed by the use of an electronic or magnetic medium, the term "Form 668" includes a Form 668 filed by the use of any electronic or magnetic medium permitted by that state. A Form 668 must identify the taxpayer, the tax liability giving rise to the lien, and the date the assessment arose regardless of the method used to file the notice of Federal tax lien.

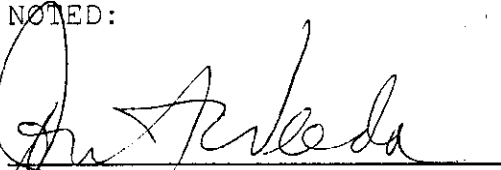
We conclude that the practice of using stamped signatures of SB/SE employees having no current connection with ALS on ALS notices of federal tax lien be discontinued. While we can find no authority for requiring a signature on any notice of federal tax lien, the past practice of signing manual notices of federal tax lien is being continued and is sanctioned by the Internal Revenue

Manual. Additionally, we have a specific authorization in Delegation Order No. 196 (Rev.4), effective 10-04-2000, of authority to sign notices of federal tax lien. IRM 1.2.2.108. Order Number 196 delegates this authority, *inter alia*, to SB/SE Compliance Area Directors, SB/SE Compliance Managers responsible for collection matters and GS-9 and above revenue officers. Accordingly, we are reluctant to advise the discontinuance of the similar past practice of placing a signature-stamp-of-approval on the ALS liens until further guidance from our national office, and we suggest, in the interim, using the signature stamp of Jack B. Cheskaty, Director, SB/SE Compliance Area 11, since this signature would be authorized for any notice of federal tax lien to be filed within SB/SE Compliance Area 11.

Please contact either of the undersigned at (303) 844-3258 or SB/SE Counsel Attorney Barbara Trethewy in Phoenix at (602) 207-8063, if you have any questions.


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NOTED:


JOHN A. WEEDA
Attorney (SB/SE)